IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 14TH SEPTEMBER 2007 / 23RD BHADRA 1929

Crl.MC.No. 2889 of 2007()

AGAINST THE ORDER DATED 01/09/2007 IN CMP 3739/2007 IN CP.27/2007 of JUDL. MAGISTRATE OF FIRST CLASS, VAIKOM

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PETITIONER: 7TH ACCUSED

MANUMOHAN ALIAS MANIKUTTY,
S/O. MOHANAN,VALIAPRARAMBIL HOUSE,
NEAR VISHNUPURAM TEMPLE, NEENDOOR,
ONAMTHURUTHU, KOTTAYAM DIST.

BY ADV. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENTS:

STATE OF KERALA,REPRESENTED BY THE
PUBLIC PROSECUTOR,HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. BREEZE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 14/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.M.C.NO. 2889 of 2007

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Dated: 14-09-2007

ORDER

Petitioner who is the 7th accused in Crime No. 280 of 2006 of Kaduthuruthy Police Station for offences punishable under Sections 148, 341, 506(i) and 306 read with Sec. 149 I.P.C. seeks to quash Annexure -II final report so far as it relates to the offence punishable under Sec.306 I.P.C. which is the only sessions offence in the case. He filed C.M.P. 3739/07 before the committal court to delete Sec. 306 I.P.C. and to drop the committal proceedings. That petition was dismissed as per Annexure IV order dated 1-9-2007. Hence this petitioner under Sec. 482 Cr.P.C.

2. The Magistrate having taken cognizance of the offences including the one punishable under Sec. 306 I.P.C. cannot go back to the pre-cognizance stage and convert the C.P. proceedings to calendar proceedings. The magistrate was therefore, fully justified in dismissing the application. If according to the revision petitioner, the offence under Sec. 306 I.P.C. is not made out against him it is open to him to raise the said contention during the preliminary hearing under Sec. 227 Cr.P.c. before the Sessions Court to which the case will be

made over for trial and in that event that court can consider the plea and if that court finds that Sec. 306 I.P.C. is not made out against the petitioner, it can proceed under Section 228 (1)(a) Cr.P.C. and transfer the case either to the Chief Judl. Magistrate or to the concerned J.f.C.M. for trial. Reserving this right of the petitioner, this M.C. is disposed of.

V. RAMKUMAR,
(JUDGE)

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